But contracts between competitors fixing prices are almost universally declared invalid because restricting competition and tending toward monopoly. *Cummings* v. *Union Blue Stone Co.*, 164 N. Y. 401; *Nester* v. *Continental Brewing Co.*, 161 Pa. St. 473. In these cases the test of reasonableness is not involved; except that if it has no tendency at all toward monopoly the contract is valid. *Phillips* v. *Iola Portland Cement Co.*, 125 Fed. 593. But complete monopoly is not essential. *Chicago, etc. Coal Co.* v. *People*, 214 Ill. 421. Nor is the fact material that the restraint is partial, in that the market controlled is small. *Craft* v. *McConoughy*, 79 Ill. 346. That the present prices fixed are reasonable does not make the contracts valid. *Central Ohio Salt Co.* v. *Guthrie*, 35 Oh. St. 666. Nor is the argument of weight that the contract prevents ruinous competition. *More* v. *Bennett*, 140 Ill. 69. The totality of public policy is the test. Hence, because they felt that public policy favored the restriction of liquor sales, some courts have sustained such agreements. *Anheuser-Busch Brewing Ass'n* v. *Houck*, 27 S. W. 692 (Tex.). Similarly, if courts cease to regard unrestricted competition as a *panacea* and unmixed blessing, they may find nothing against public policy in agreements between competitors fixing prices under some circumstances. *Park & Sons Co.* v. *National Wholesale Druggists' Ass'n*, 175 N. Y. 1; *Over* v. *Byram Foundry Co.*, 37 Ind. App. 452, 458.

SPECIFIC PERFORMANCE — AFFIRMATIVE CONTRACTS — CONTRACT FOR SALE OF EXPECTANT ESTATE. — A devised land to B in fee, provided she remained his widow; but if she should marry, then to C, D, and E. B, while still a widow, conveyed her estate to C and D; then D conveyed to C. E had agreed to sell her interest to C. C filed a bill to compel E to convey. *Held*, that the decree will not be granted. *Cummings* v. *Lohr*, 92 N. E. 970 (Ill.).

At common law, a contingent interest in land was not alienable to a stranger; it could, however, always be released to the one having the estate in possession. *Williams* v. *Esten*, 179 Ill. 267; WILLIAMS, REAL PROPERTY, 21 ed., 367. In the principal case C held the estate in possession, and as E had the only outstanding interest, his right to specific performance of the contract to convey would seem to be clear. C's position as the one in possession of the preceding estate was apparently not noticed, and the court, treating him as a stranger, denied relief. If C were to be treated as a stranger, the apparent impossibility of rendering an effective decree would seem to be the ground for refusing specific performance. A deed purporting to convey an expectant estate is treated as an executory contract enforceable only on the vesting of the estate. *Mudge* v. *Hammill*, 21 R. I. 283. A decree ordering such a conveyance would accomplish nothing. But this difficulty might be overcome, it is submitted, by a decree ordering a conveyance with covenant of warranty. *Cf. Robertson* v. *Wilson*, 38 N. H. 48. By estoppel, the estate would vest in the grantee if B married. Or a decree that the defendant convey when the estate vests would be equally effective. *Cf. Pegge* v. *Skynner*, 1 Cox Ch. 23.

STATUTE OF FRAUDS — PART PERFORMANCE — CONTRACT TO DEVISE LAND FOR PERSONAL SERVICES. — The plaintiff lived with the defendant's intestate, performing many personal services and submitting to strict theories of living, in consideration of a parol promise to devise the house to her. This was not done, but shortly before the intestate's death the keys of the house were given to the plaintiff. A recovery for most of the services in *quantum meruit* would be barred by the Statute of Limitations. *Held*, that specific performance of the contract should be granted. *Gladville* v. *McDole*, 93 N. E. 86 (Ill.).

It is well settled in England that performance of personal services of any sort will never take a parol contract for the conveyance of land out of the Statute of Frauds. *Maddison* v. *Alderson*, 8 App. Cas. 467. This is based on the doctrine that specific performance is granted only if the plaintiff's performance

discloses the existence of a contract concerning this land, whereas these services might well have been rendered for a pecuniary compensation. And in American jurisdictions which have adopted the English theory, it has been declared that constructive possession will not be sufficient evidence of such a contract. *Miller* v. *Lorentz*, 39 W. Va. 160. But the weight of American authority favors a recovery in these cases, provided the services rendered were such that they could not be adequately compensated by money. *Rhodes* v. *Rhodes*, 3 Sandf. Ch. (N. Y.) 279. This is more readily recognized where a recovery for the services would be barred by the Statute of Limitations. *Warren* v. *Warren*, 105 Ill. 568. But see *Terry* v. *Craft*, 87 S. W. 844 (Tex.). It is inequitable to allow the plaintiff, who has acted on the defendant's assurances, to be placed in such a position that the damages he would recover at law would not put him *in statu quo*. The services in the principal case probably fall within this rule.

TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO ADDRESSEE — LIABILITY FOR DELAY OR NON-DELIVERY. — The plaintiff wrote to W. soliciting a loan of money to be used in avoiding a sacrifice sale of certain property, and urging an answer by telegraph. W. wired at once, "will mail you draft to-day"; but the delivery to the plaintiff was negligently delayed several days. The plaintiff consequently sold her property at a sacrifice and then sued the telegraph company in tort. *Held*, that the plaintiff can recover. *Western Union Telegraph Co.* v. *Lawson*, 182 Fed. 369 (C. C. A., Ninth Circ.).

It is hard to determine what right, if any, of the sendee's has been infringed in cases of negligent delay. In England a sendee has no action unless the sender was his agent, or the altered message an intentional fraudulent representation by the company. *Dickson* v. *Reuter's Tel. Co.*, 3 C. P. D. 1, 6; *Playford* v. *United Kingdom Electric Tel. Co.*, L. R. 4 Q. B. 706. American courts advance four grounds for allowing the sendee to sue. (1) The sendee has a property in the message and should recover for its wrongful detention, like a consignee of goods. See *Young* v. *Western Union Tel. Co.*, 107 N. C. 370, 372. This view has not met with approval. See *Western Union Tel. Co.* v. *Allen*, 66 Miss. 549, 556. (2) The sendee is treated as principal and the sender as his agent in sending the telegram. *Milliken* v. *Western Union Tel. Co.*, 110 N. Y. 403. See *Butner* v. *Western Union Tel. Co.*, 2 Okl. 234. This would provide only for cases of actual agency. (3) The sendee is treated as beneficiary of the sender's contract. *Frazier* v. *Western Union Tel. Co.*, 45 Or. 414, 417, 418; *Western Union Tel. Co.* v. *Adams*, 75 Tex. 531, 536. This would not cover most cases without a straining of the facts. (4) The telegraph company is a public agency and responsible alike on its public undertaking to sender and sendee, the duty arising with acceptance of the telegram. *Western Union Tel. Co.* v. *Allen*, 66 Miss. 549; *New York & Washington Printing Tel. Co.* v. *Dryburg*, 35 Pa. St. 298. But see 17 HARV. L. REV. 365. Theoretically the English courts have reached the right result. If the sendee is to have a right to sue it should come from the legislature. *Herron* v. *Western Union Tel. Co.*, 90 Ia. 129; *Wadsworth* v. *Western Union Tel. Co.*, 86 Tenn. 695, 707.

TITLE, OWNERSHIP, AND POSSESSION — WHAT POSSESSION IS NECESSARY TO MAINTAIN ACTION OF FORCIBLE ENTRY AND DETAINER. — The plaintiff occupied premises owned by the defendant under a lease expiring November 1. On September 3 the defendant forcibly ejected the plaintiff's watchman. In an action of forcible entry and detainer, the defendant offered evidence tending to prove that the plaintiff had made a parol surrender of the lease in August, and that the defendant had taken possession. *Held*, that the evidence is admissible. *Schwinn* v. *Perkins*, 78 Atl. 19 (N. J., Ct. Err. & App.).

If the defendant offered this evidence to show that he had the right to im-